

and undertaking that the savings association will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any Federal savings association receiving approval under this paragraph (g)(1)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required.* A Federal savings association is not required to file a notice or application under this §5.58 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

(h) *Additional exception to filing requirement.* A Federal savings association may make a pass-through investment without filing a notice or application to the OCC if all of the following conditions are met:

(1) The investment is in an investment company the portfolio of which consists exclusively of assets that the Federal savings association may hold directly;

(2) The Federal savings association is not investing more than 10 percent of its total capital in one company;

(3) The book value of the Federal savings association's aggregate non-controlling investments does not exceed 25 percent of its total capital after making the investment;

(4) The investment would not give Federal savings association direct or indirect control of the company; and

(5) The Federal savings association's liability is limited to the amount of its investment.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for pass-through investments.

[80 FR 28466, May 18, 2015]

§5.59 Service corporations of Federal savings associations.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) *Licensing requirements.* When required by section 18(m) of the Federal Deposit Insurance Act, a Federal sav-

ings association must file an application as prescribed in this section to:

(1) Acquire or establish a service corporation; or

(2) Commence a new activity in an existing service corporation subsidiary.

(c) *Scope.* This section sets forth the OCC's requirements regarding service corporations of Federal savings associations, and sets forth procedures governing OCC review and approval of filings by Federal savings associations to establish or acquire service corporations and filings by Federal savings associations to conduct new activities in existing service corporation subsidiaries, pursuant to the authority provided in section 5(c)(4)(B) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(4)(B).

(d) *Definitions*—(1) *Control* has the meaning set forth at 12 U.S.C. 1841 and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225.

(2) *GAAP-consolidated subsidiary* means a service corporation in which a Federal savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under generally accepted accounting principles (GAAP).

(3) *Ownership interest* means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

(4) *Service corporation* means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and this part, and that is designated by the investing Federal savings association as a service corporation pursuant to this section. A service corporation may be a first-tier service corporation of a Federal savings association or may be a lower-tier service corporation.

(5) *Service corporation subsidiary* means a service corporation of a Federal savings association that is controlled by that savings association.

(e) *Standards and requirements*—(1) *Ownership.* Only Federal or state-chartered savings associations with home offices in the state where the relevant Federal savings association has its

home office may have an ownership interest in a first-tier service corporation. A Federal savings association need not have any minimum percentage ownership interest or have control of a service corporation in order to designate an entity as a service corporation.

(2) *Geographic restrictions.* A first-tier service corporation must be organized under the laws of the state where the relevant Federal savings association's home office is located.

(3) *Authorized activities.* A service corporation may engage in any of the designated permissible service corporation activities listed in paragraph (f) of this section, subject to any applicable filing requirement under paragraph (h) of this section. In addition, a Federal savings association may request OCC approval for a service corporation to engage in any other activity reasonably related to the activities of financial institutions.

(4) *Investment limitations.* A Federal savings association's investment in service corporations is subject to the limitations set forth in paragraph (g) of this section. The assets of a Federal savings association's service corporations are not subject to the investment limitations applicable to the savings association under section 5(c) of the HOLA.

(5) *Form of organization.* A service corporation may be organized as a corporation, or may be organized in any other organizational form that provides the same protections as the corporate form of organization, including limited liability.

(6) *Qualified thrift lender test.* In accordance with 12 U.S.C. 1467a(m)(5), a Federal savings association may determine whether to consolidate the assets of a particular service corporation for purposes of calculating qualified thrift investments. If a service corporation's assets are not consolidated with the assets of the Federal savings association for that purpose, the savings association's investment in the service corporation will be considered in calculating the savings association's qualified thrift investments.

(7) *Supervisory, legal or safety or soundness considerations.* (i) Each service corporation must be well managed

and operate safely and soundly. In addition, each service corporation must pursue financial policies that are safe and consistent with the purposes of savings associations. Each service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

(ii) The OCC may, at any time, limit a Federal savings association's investment in a service corporation, or limit or refuse to permit any activity of a service corporation, for supervisory, legal, or safety or soundness reasons.

(8) *Separate corporate identity.* Federal savings associations and service corporations thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(i) Their respective business transactions, accounts, and records are not intermingled;

(ii) Each observes the formalities of their separate corporate procedures;

(iii) Each is held out to the public as a separate enterprise; and

(iv) Unless the parent Federal savings association has guaranteed a loan to the service corporation, all borrowings by the service corporation indicate that the savings association is not liable.

(9) *Issuances of securities by service corporations.* A service corporation shall not state or imply that the securities it issues are covered by Federal deposit insurance. A service corporation subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

(10) *Certain pre-existing non-controlling investments.* A Federal savings association that made a non-controlling investment in a service corporation before May 18, 2015, but did not submit a filing under 12 U.S.C. 1828(m) with respect to such service corporation investment, is not required to file a service corporation application with respect to such investment pursuant to paragraph (b), provided that the Federal savings association does not acquire additional stock or similar interests in the service corporation, and the service corporation does not engage in any activities in which it was not engaged as of May 18, 2015.

(f) *Authorized service corporation activities.* Subject to the prior filing requirements set forth in paragraph (h) of this section and the provisions of paragraph (e)(3) of this section, a service corporation may engage in the following activities:

(1) *Any activity that all Federal savings associations may conduct directly.*

(2) *Business and professional services.* Service corporations may engage in the following activities only when such activities are limited to financial documents or financial clients or are generally finance-related:

- (i) Accounting or internal audit;
- (ii) Advertising, market research and other marketing;
- (iii) Clerical;
- (iv) Consulting;
- (v) Courier;
- (vi) Data processing;
- (vii) Data storage facilities operation and related services;
- (viii) Office supplies, furniture, and equipment purchasing and distribution;
- (ix) Personnel benefit program development or administration;
- (x) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;
- (xi) Relocation of personnel;
- (xii) Research studies and surveys;
- (xiii) Software development and systems integration; and
- (xiv) Remote service unit operation, leasing, ownership or establishment.

(3) *Credit-related activities.* (i) Abstracting;

- (ii) Acquiring and leasing personal property;
- (iii) Appraising;

- (iv) Collection agency;
- (v) Credit analysis;
- (vi) Check or credit card guaranty and verification;
- (vii) Escrow agent or trustee (under deeds of trust, including executing and delivery of conveyances, reconveyances and transfers of title); and
- (viii) Loan inspection.

(4) *Consumer services.* (i) Financial advice or consulting;

- (ii) Foreign currency exchange;
- (iii) Home ownership counseling;
- (iv) Income tax return preparation;
- (v) Postal services;
- (vi) Stored value instrument sales;
- (vii) Welfare benefit distribution;
- (viii) Check printing and related services; and
- (ix) Remote service unit operation, leasing, ownership, or establishment.

(5) *Real estate related services.* (i) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

- (ii) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating or demolishing and rebuilding for resale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;
- (iii) Maintaining and managing real estate; and
- (iv) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, or a lower-tier service corporation in which the service corporation invests.

(6) *Securities activities, liquidity management, and coins.* (i) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

- (ii) Liquidity management;
- (iii) Issuing notes, bonds, debentures, or other obligations or securities; and

(iv) Purchase or sale of coins issued by the U.S. Treasury.

(7) *Investments.* (i) Tax-exempt bonds used to finance residential real property for family units;

(ii) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(iii) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(iv) Rural business investment companies licensed by the U.S. Department of Agriculture; and

(v) Investing in savings accounts of an investing thrift.

(8) *Community development investments.* Community and economic development or public welfare investments that are permissible under part 24 of this chapter.

(9) *Charitable activities.* Establishing or acquiring a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(10) *Activities conducted as agent.* Activities conducted on behalf of a customer on other than an “as principal” basis.

(11) *Incidental activities.* Activities reasonably incident to those listed in paragraphs (f)(1) through (f)(10) of this section if the service corporation engages in those activities.

(g) *Limitations on investments in service corporations—(1) In general.* Under the authority of section 5(c)(4)(B) of the HOLA, a Federal savings association may invest up to 3 percent of its assets in the capital stock, obligations, and other securities of service corporations. Any investment that would cause a Federal savings association’s investment in service corporations, in the aggregate, to exceed 2 percent of assets, or made while the savings association’s investments in service corporations exceeds 2 percent of assets, must serve primarily community,

inner city, or community and economic development or public welfare purposes consistent with § 24.6 of this chapter. A Federal savings association must designate the investments serving those purposes.

(2) *Loans.* In addition to the amounts that a Federal savings association may invest under paragraph (g)(1) of this section, and to the extent that a Federal savings association has authority under other provisions of section 5(c) of the HOLA and parts 5 and 160 of this chapter, and available capacity within any applicable investment limits, a Federal savings association may make loans to any service corporation subject to the following conditions:

(i) Loans to service corporations other than a GAAP-consolidated subsidiary are subject to the lending limits in part 32 of this chapter.

(ii) The OCC may limit the amount of loans to any service corporation where safety and soundness considerations warrant such action.

(3) *Definition.* For purposes of this paragraph, the terms “loans” and “obligations” include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

(4) *GAAP-consolidated subsidiaries.* Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of 12 CFR part 3.

(h) *Filing requirements—(1) Application.* (i) When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application at least 30 days before:

(A) Acquiring or establishing a service corporation; or

(B) Commencing a new activity in an existing service corporation subsidiary.

(ii) The application must include a complete description of the savings association’s investment in the service corporation, the proposed activities of the service corporation, the organizational structure and management of the service corporation, the relations between the savings association and

the service corporation, and other information necessary to adequately describe the proposal. If the service corporation proposes to engage in insurance activities, the savings association must describe the type of insurance activity in which the service corporation proposes to engage. The savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the service corporation holds a resident license or charter, as applicable. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(2) *Expedited review.* (i) An application to establish or acquire a service corporation, or to perform a new activity in an existing service corporation subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(ii) An application is eligible for expedited review if the following requirements are met:

(A) The savings association is “well capitalized” and “well managed”; and

(B) The service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

(3) *OCC review and approval.* The OCC reviews a Federal savings association’s application to determine whether the proposal is legally permissible and to ensure that the proposal is consistent with the requirements of this section, safe and sound banking practices and OCC policy and does not endanger the

safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(4) *Redesignation.* A Federal savings association that proposes to redesignate an operating subsidiary as a service corporation must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated entity will meet all of the requirements of this section, a resolution of the savings association’s board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(5) *Exception to rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(i) *Exercise of salvage powers through service corporations.* (1) In accordance with this section, a Federal savings association may exercise its salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to a service corporation (“salvage investment”) that exceeds the maximum amount otherwise permitted under law or regulation. A Federal savings association must notify the appropriate supervisory office at least 30 days before making such a salvage investment. The notification must demonstrate:

(i) The salvage investment protects the savings association’s interest in the service corporation;

(ii) The salvage investment is consistent with safety and soundness; and

(iii) The savings association considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (i)(1)(i) and (ii) of this section.

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(2) If the OCC notifies the Federal savings association within 30 days of the filing of the notification that the notification presents supervisory concerns, or raises significant issues of law or policy, the Federal savings association must apply for and receive the OCC's prior written approval before making the salvage investment.

(3) If a service corporation is a GAAP-consolidated subsidiary, the salvage investment will be considered an investment in a subsidiary for purposes of 12 CFR part 3.

(j) *Failure to comply with the requirements applicable to service corporations.* If a service corporation fails to meet any of the requirements of this section, the Federal savings association must notify the appropriate OCC licensing office. Unless the Federal savings association is otherwise advised by the OCC, if the service corporation cannot comply with the requirements of this section within 90 days of failing to meet such requirements, or otherwise resolve such failure to comply with this section, the Federal savings association must promptly dispose of its investment in the service corporation.

[80 FR 28467, May 18, 2015]

Subpart E—Payment of Dividends by National Banks

§ 5.60 Authority, scope, and exceptions to rules of general applicability.

(a) *Authority.* 12 U.S.C. 56, 60, and 93a.

(b) *Scope.* Except as otherwise provided, the restrictions in this subpart apply to the declaration and payment of all dividends by a national bank, including dividends paid in property. However, the provisions contained in § 5.64 do not apply to dividends paid in stock of the bank.

(c) *Exceptions to the rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this subpart.

§ 5.61 Definitions.

For the purposes of subpart E, the following definitions apply:

(a) *Capital stock, capital surplus, and permanent capital* have the same meaning as set forth in § 5.46.

(b) *Retained net income* means the net income of a specified period less the

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total amount of all dividends declared in that period.

§ 5.62 Date of declaration of dividend.

A national bank shall use the date a dividend is declared for the purposes of determining compliance with this subpart.

§ 5.63 Capital limitation under 12 U.S.C. 56.

(a) *General limitation.* Except as provided by 12 U.S.C. 59 and § 5.46, a national bank may not withdraw, or permit to be withdrawn, either in the form of a dividend or otherwise, any portion of its permanent capital. Further, a national bank may not declare a dividend in excess of undivided profits.

(b) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits of the national bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

§ 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Definitions.* As used in this section, the term “current year” means the calendar year in which a national bank declared, or proposes to declare, a dividend. The term “current year minus one” means the year immediately preceding the current year. The term “current year minus two” means the year that is two years prior to the current year. The term “current year minus three” means the year that is three years prior to the current year. The term “current year minus four” means the year that is four years prior to the current year.

(b) *Dividends from undivided profits.* Subject to 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient.

(c) *Earnings limitations under 12 U.S.C. 60—(1) General rule.* For purposes of 12 U.S.C. 60, unless approved by the OCC in accordance with paragraph (c)(3) of this section, a national bank may not declare a dividend if the total amount